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Current Topics.

Mr. Justice Hawke.

WITH the death of Mr. Justice HAWKE on circuit on 30th October a genial and friendly figure has departed from the Bench. The extent of his popularity with Bench and Bar alike was well measured by the Lord Chief Justice, who, addressing the Attorney-General in court on 30th October, said that it was impossible to begin the day's work without one word of affectionate remembrance of one who was a most loyal and lovable colleague. He possessed a patience without which it was impossible to do justice. No mere technicality appealed to him if it stood in the way of justice, and he sought at all times to carry out his duties in the sight of God and of man in such a way as to justify his position. At the date of his death the late judge was seventy-two years of age. In 1891 he obtained first-class honours in the School of Jurisprudence at Oxford and was called to the Bar in the following year at the Middle Temple. Having read in the chambers of the late HENRY TINDAL ATKINSON, father of the present Director of Public Prosecutions, he soon became a busy advocate. In 1913 he took silk, and in 1923 he became Attorney-General to the Prince of Wales. In February, 1928, he became a High Court Judge. He sat as Conservative member of Parliament for St. Ives, Cornwall, in 1922 and 1923, and 1924 to 1928. His rare kindliness and humanity will be sadly missed.

The Civil Judicial Statistics.

THAT interesting compilation, the Civil Judicial Statistics, is for reasons of economy not printed for the year 1940, but some figures have been made available which give a reasonably clear picture of the shrinkage in the volume of litigation in the first full year of the war. The number of appeals to the House of Lords during 1940 was 28, as compared with 45 in 1939. Appeals in the Court of Appeal numbered 496, a decrease of 20 as compared with 1939. Of these, 145 were appeals from county courts. The total of appeals and special cases entered or filed in the High Court from inferior courts was 208, a decrease of 40 as compared with 1939. The total proceedings in the three divisions of the High Court of Justice showed a decrease of 5·3 per cent., as compared with the preceding year, from 100,705 to 95,406. In the Chancery Division there was actually an increase from 6,547 to 17,064. This was mainly due to an increase from 4,320 to 11,267 in the number of originating summonses issued owing to the transfer to the Chancery Division of certain mortgage proceedings. In the King's Bench there was a decrease of 10,997 to 69,521 proceedings, and in Probate, Divorce and Admiralty there was a decrease of 849 to 8,821. The number of matrimonial petitions filed during the year was 7,183, a decrease of 2,644 over the preceding year. The number of petitions for dissolution of marriage filed during the year included 2,326 for desertion, 340 for cruelty, 159 for lunacy and 32 for presumed decease. There were three petitions for dissolution of marriage on the ground of lunacy. The total number of decrees *nisi* for dissolution of marriage was 7,111, 3,441 being on husbands' petitions and 3,670 on wives' petitions. Matrimonial causes to the number of 3,352, of which 1,608 were Poor Persons' causes, were tried at assize towns. The total number of Poor Persons' proceedings decreased by 1,185 to 2,623. Matrimonial causes formed 92 per cent. of the total, decreasing by 1,292 to 2,422. Petitions filed at district registries decreased by 797 to 1,397. In 95 per cent. of the causes tried of which they were parties poor persons were successful. In the county courts the number of proceedings commenced showed a decrease of 24·8 per cent., as compared with the preceding year, from 1,121,202 to 842,739. Of the plaints entered, 4·5 per cent. were for amounts over £20. Of the actions for trial, 48 per cent. (472,969) were determined without hearing or in the defendant's absence. Of the actions determined on hearing, 66 per cent. were determined before a judge and the remaining 34 per cent. before a registrar. The number of judgment summonses heard decreased from 204,176 to 172,281, and the number of orders of commitment issued decreased from 107,002 to 105,723. Finally, the number of cases heard by the Judicial Committee of the Privy Council decreased from 96 in 1939 to 59 in 1940.

Road Accidents.

THE debate in the House of Lords on road accidents on 21st October, 1940, again called attention to what the BISHOP OF WINCHESTER called "the grave increase in the number of fatal accidents on the road." His lordship, in opening the debate, said that casualties at once dropped by 19 per cent. when in 1935 a number of areas were put under speed control, and quoted Sir PHILIP GAME, the Commissioner of Police for London, who recently said that undue speed was the predominating factor in causing the increase of accidents. His lordship did not ask for a universal speed limit, but only that the existing law about speed should be enforced. His main suggestion was that the Alness Report on Road Traffic, which was published in 1939 after the hearing of a great deal of evidence by a Select Committee, should be taken out of cold storage and that as many of its recommendations as possible should be accepted and acted upon, particularly those dealing with education and segregation of the various classes of those who use the roads. VISCOUNT CECIL OF CHELWOOD characterised the way in which the question had been treated as one of the greatest of scandals in English history. He contrasted the way in which the law had excluded the public from the railway tracks, but required the same roads to be used by vehicles going at the speed of an express train and by little children toddling along at no speed at all. His lordship also subscribed to the view that the whole reason for the great number of accidents was the speed at which motors were driven and pointed to the rarity of accidents in the days of horse traffic. He believed that, contrary to official views, if the motor traffic of this country were reduced to a moderate speed, the "life blood of civilisation" (i.e., traffic) would not be affected at all. With regard to the alleged public apathy on the subject, his lordship contrasted the inarticulateness of the unorganised poor, who were the main sufferers, spread as they were over the whole country, with the articulateness of the organisations whose natural bias, without intentional wickedness, was to do nothing which might impede the sale of motors. LORD RUSHCLIFFE, who was a member of the Alness Committee, asked what had happened to the recommendation that steps should be taken to ensure that "accident-prone" drivers should be prevented from driving in future. He recalled another of the many recommendations, viz., that on the sale of a second-hand car a certificate of fitness should

be given as to the brakes of the car. LORD NEWTON recommended increased penalties for offenders. VISCOUNT MAUGHAM spoke as one who had had to hear many accident cases in the Court of Appeal and supported the suggestions as to reduction of the speed limits and increased penalties. The Minister for War Transport indicated, in reply, what the Government had already done since the issue of the Alness Report, and stated that a committee had been appointed to consider and frame war-time plans for reducing accidents on the roads. There should be an assurance that the committee will commence and finish its work with expedition, for something must be done, and done quickly, to reduce this appalling wastage of life.

Bail.

WHEN the Divisional Court granted an application on 29th October for a rule to quash an order of the Brentford justices remanding G. F. MUIRHEAD in custody for three weeks, costs were ordered against the magistrates, and LORD CALDECOTE, C.J., said that he was surprised that it should be necessary to have to listen to an argument, based on the Indictable Offences Act, 1848, that that Act empowered the magistrates, in a summary case, to remand a person indefinitely. His lordship characterised the argument as one "manifestly opposed to the true administration of justice." He also said that it would be a form of oppression if adopted. On behalf of the applicant for the rule it was stated that when he appeared to answer a summons accusing him of refusing to submit himself for a medical examination, before he had pleaded and before the facts were stated, the chairman remanded him in custody. The applicant had since obtained bail from a judge in chambers. The power to remand accused persons is contained in s. 21 of the Indictable Offences Act, 1848, and magistrates may exercise it "if, from the absence of witnesses or from any other reasonable cause it shall become necessary or advisable to defer the examination or further examination of the witnesses for any time." The remand may be for such time as by the justices shall be deemed reasonable, not exceeding, unless the person remanded and the prosecutor consent, eight clear days, to the common gaol or house of correction or other prison, lock-up house, or place of security. Those whose work takes them to the magistrates' courts are frequently shocked by the careless ease with which some lay magistrates exercise this vital discretion of granting or refusing bail in criminal cases. Any vague statement by a police detective that "inquiries are being pursued" seems to be sufficient in many cases to make subservient magistrates refuse bail. The result is that some persons who are in fact innocent, and others who are innocent until proved guilty, are condemned to imprisonment because, presumably, it is feared that they will hamper police inquiries if they are at large, a completely unwarrantable assumption in most cases. In any case, the fact that the preparation of the defence is hindered by the defendant being in custody is at least as important as the gathering in of witnesses for the prosecution. As "Solicitor" states in his admirable work on "English Justice": "If the police raise any objection bail is almost invariably refused without further evidence of any kind being called." Every police court practitioner knows this, and appreciates that if his client is without means, the obstacles in the way of obtaining the proper redress in the High Court are great. The question of bail is clearly one in which the strictest instruction and guidance from the Home Office to justices is essential.

Value Payments.

ACCORDING to a memorandum issued by the Public Relations Officer of the War Damage Commission, some doubt has been expressed as to the correct meaning to be attached to the words "at that time" in line 13 of s. 3 (5) of the War Damage Act, 1941. Section 3 (4) provides that the amount of a value payment shall be an amount equal to the amount of the depreciation in the value of the hereditament caused by the war damage, and s. 3 (5) provides that the value is to be computed by reference to prices current at 31st March, 1939, and is to be taken to be the amount which the fee simple, in the state it was in immediately before and immediately after the damage, respectively, might have been expected to realise on a sale in the open market with vacant possession, "subject to any restrictive covenant, easement, quasi-easement, or other right inuring for the benefit of other land, any public right of way, right of common, or other right inuring for the benefit of the public or any section thereof, and any restriction or liability imposed by or under an enactment, to which the hereditament was subject *at that time* . . ." The point on which doubt has arisen, it is stated, is whether, for the purpose of the valuations, the restrictive covenants, easements and other incidents are to be assumed to be those attaching immediately before and immediately after the damage respectively, or on the date of the hypothetical sales, namely, 31st March, 1939. The War Damage Commission has decided in favour of the former alternative. Its forms ask for particulars of the incidents existing on 31st March, 1939, and arrangements are being made to correct this in future issues. Where claims have already been lodged the claimant will be asked, before a final determination of the amount of the value payment is made by the Commission, whether there was any change in the incidents between 31st March, 1939, and the date of the war damage. There seems little doubt, having regard to the juxtaposition of the words in the subsection, that the Commission's later determination is correct.

Payments for Cost of Works.

A VALUABLE suggestion has been made by the War Damage Commission in order to meet difficulties experienced by persons who have suffered war damage in getting repairs done to their property owing to the reluctance of builders to give credit. The suggestion is that the claimant should give a written authority to his builder to receive payment from the Commission in respect of the work. The Commission will recognise such an authority, and on completion of the work will pay the builder as agent for the claimant, provided that the authority given is not in law a formal assignment of the right of payment. It is not easy to see what objection there is to a formal assignment, made, of course, to operate conditionally on the work being done, as all that would be necessary on completion of the work would be to obtain the written approval of the Commission to the assignment under s. 9 (7) of the Act. The Commission, however, has settled a form of authority to which it will give general approval. This form is addressed to the War Damage Commission and the heading contains the address of the property and the file number. It states that the signor has appointed the builder as his agent to receive on his behalf any temporary works payment under Pt. I of the War Damage Act, 1941, in respect of the cost incurred or to be incurred by the signor in executing works which the builder has completed and/or has undertaken to carry out for the signor in order to make good war damage to the property described in the heading, the receipt of the builder to be a full discharge for any sum so paid. The form should, of course, be dated and signed. The suggestion will be welcomed for the additional security for the payment of builders engaged on this important work, but if a constructive criticism may be ventured, the fear of builders is not so much of failure of payment, but of failure of prompt payment, a fact which, as recent pronouncements by the Commission show, is being borne in mind.

Repair of War Damage.

ANOTHER item of help in the speedy repair of war-damaged houses comes in the form of a certificate (under s. 2 of the Rules Publication Act, 1893) by the Minister of Health, dated 10th October, 1941, which is to come into force immediately. This is set out in the Housing (Repair of War Damage) Regulations, 1941, made under s. 176 (1) of the Housing Act, 1936, and they are provisional regulations to come into force immediately on account of urgency. The Housing (Repair of War Damage) Regulations, 1939, dated 4th September, 1939, are revoked. The revoked regulations set out the form to be used in connection with the powers and duties of a local authority under s. 1 of the Housing (Emergency Powers) Act, 1939, to carry out works to repair war-damaged buildings. The new form is similar to the old, except that in addition to the council intimating that it will consider any representations which may be made before the expiration of the fourteen days at the end of which the council intends to do the works, the form states: "If, however, within that period (fourteen days) you inform them in writing that you do not object to the execution of the said works by the council, the said works may be put in hand forthwith." Moreover, the statement that the cost of the works when carried out will be registered as a charge on the building, but no demand for payment will be made on the addressee during the period of the present emergency, is now omitted. The new order should materially contribute to a mitigation of the growing housing shortage.

Recent Decision.

IN *Woolfall & Rimmer, Ltd.* v. *Moyle and Another* on 20th October (*The Times*, 21st October), the Court of Appeal (the Master of the Rolls, GODDARD and DU PARCQ, L.JJ.) held that a question in a proposal form for a Lloyd's employers' liability insurance policy, as to whether the assured's machinery, plant and ways were properly fenced and otherwise in good order and condition merely related to the present and did not extend to the condition of the machinery, plant and ways at all future times during the currency of the policy.

Finance Regulations.

Consolidation and Amendments—X.

The Sterling Area.

In previous articles of this series the nature and importance of the concept of the "sterling area" in the scheme of financial control has been pointed out. The actual geographic limits of the area have varied from time to time to meet the exigencies of the political situation (85 SOL. J. 123). Recent events have again necessitated a change in the territories to be included in the sterling area; this change was brought about by the Defence (Finance) (Definition of Sterling Area) (Amendment) Order, 1941 (S.R. & O., No. 1124). This order brings Hong Kong into the sterling area.

Blocked Accounts.

Sums of money which have been placed in blocked accounts may be invested and dealt with in the manner laid down in the appropriate order. The Blocked Accounts (Authorised Investments) Order, 1941 (S.R. & O., No. 233—see 85 SOL. J. 278), has been revoked and replaced in almost identical terms by the Blocked Accounts (Authorised Investments) (No. 2) Order, 1941 (S.R. & O., No. 844). The schedule of securities in which the money may be invested is slightly altered. It comprises entirely securities issued by His Majesty's Government in the United Kingdom and is now divided into two parts only. If the investment is made in any security in Pt. II of the schedule it is to be registered both as to principal and interest.

Control of Dollar Securities.

Under the Emergency Powers (Defence) Act, 1939, and the Defence (Finance) Regulations the Treasury has wide powers of control over foreign securities and investments, when they deem the exercise of such control to be expedient for the purpose of strengthening the financial position of the United Kingdom. In the early days the control over American securities held by residents in this country was exercised by the compulsory sale to the Treasury of various specified securities. This control was carried out by means of a series of now well-known registration and acquisition orders. But of recent months the technique has been changing. The first sign of change was in March of this year, when the whole of the direct investment of Courtaulds in the American Viscose Corporation, as distinct from a security already saleable on a stock exchange, was sold. This procedure turned out to be a not very satisfactory one. In about April another method was tried. A loan was granted by the Reconstruction Finance Corporation—an agency of the United States Government—to an American corporation which was affiliated to the British American Tobacco Company on the security of the stock held in the American corporation by the British company. A portion of this loan equivalent to what could have been realised by a sale of the British company's holding came into the possession of the Treasury. This latter method has been developed and is the basis of the procedure now adopted.

Since it was thought that the loans to be raised will be of longer duration than the war, and thus of the powers under the Emergency Powers (Defence) Acts, 1939 and 1940, a new Act of Parliament to deal with the matter has been obtained. This is the Financial Powers (U.S.A. Securities) Act, 1941 (4 & 5 Geo. 6, c. 36).

The preamble, which sets out the object and purpose of the Act, states that it is expedient to give effect to an agreement entered into on the 21st July, 1941, between His Majesty's Government in the United Kingdom and the Reconstruction Finance Corporation. The object of this agreement is the making of a loan by the Reconstruction Finance Corporation to His Majesty's Government. The loan is to be repayable, subject to provisions in the agreement for prepayment and extension, on the 1st July, 1956. Security for the loan is to be obtained by the pledge of securities of corporations incorporated under the laws of the U.S.A. or of any of its constituent states, and by the application to the service of the loan of income from such securities and also of income in the U.S.A. of British insurance companies.

Power is given to the Treasury by s. 1 of the Act to make such arrangements as may be necessary for the carrying out of the agreement, and in particular to require securities and income and payments therefrom to be placed at the disposal of the Treasury, and to require, prohibit or restrict the doing of any acts or the execution of any documents. These things shall be done by means of regulations, orders and directions. Pursuant to this power, regulations have been made. These are the Financial Powers (U.S.A. Securities) Regulations, 1941 (S.R. & O., No. 1112). Regulation 1 deals with securities, and reg. 2 with the American income of British insurance companies. The Treasury has power to make an order requiring the owner of a security, so far as it is within his power, to place the security at the disposal of the Treasury, and to execute such documents and do such acts as the Treasury or the Bank of England on their behalf may direct for the following purposes:—

(*a*) Delivering the security or any document of title relating to it to the Treasury or as the Treasury may direct;

(*b*) Payment of interest or dividends on the security to the Treasury or as the Treasury may direct;

(*c*) making exercisable the voting power in respect of the security in accordance with the requirements of the Treasury.

When such an order has been made, no person shall, except with the permission of the Treasury, sell, transfer or create a charge on the security. Such an order was made on the 5th August. It is the U.S.A. Securities (Placing at Treasury Disposal) Order, 1941 (S.R. & O., No. 1139). According to it, the owners of the securities specified in the schedule, for which a return has been previously made to the Bank of England, shall place those securities at the disposal of the Treasury. The schedule sets out a list of American shares and debentures for details of which the schedule itself should be consulted. The order is expressly stated not to apply to securities exempted under reg. 5A (1) of the Defence (Finance) Regulations and to securities sold with the permission of the Treasury to persons not resident in the United Kingdom, the Isle of Man or the Channel Islands.

Similarly, any person resident in the United Kingdom who carries on in the United States any marine, fire, casualty or accident insurance business comes within reg. 2. He may be required to pay to the Treasury, or as they direct, any interest, dividends, rents or other income arising from the business, and to execute such documents or to do such acts as the Treasury or the Bank of England on their behalf may specify in order that such moneys may be so paid to the Treasury.

To enforce the efficient carrying out of these two regulations the Treasury has power under reg. 3 to require the furnishing of information and the maintaining of such reserves as they consider to be adequate. They may direct that there shall be furnished to them balance sheets, financial statements and reports concerning the financial position of the corporation or business, as they may require. These powers apply both in the case of the securities of a corporation coming under reg. 1 and of a British insurance company coming under reg. 2. In addition, in the case of a corporation coming under reg. 1, the Treasury has power to direct any person who is the owner of such a security to take such steps as are in his power to control the issue of securities by that corporation. Regulation 4 takes this question of the obtaining of information a step further. The Treasury is empowered to give directions to any person requiring him to furnish to them or to a person designated by them such information as they may require to secure compliance with these regulations or to detect evasions of them. A person may be required to produce books or documents, and the Treasury has power to enter premises in order to take possession of such documents. It is further of some interest to note that any information given by a person in compliance with this regulation may be given in evidence against him, even though it may tend to incriminate him. The ordinary rules of admissibility of evidence are to apply. Furthermore, these powers of the Treasury may be delegated to such persons or class of persons as the Treasury think fit.

The penalties for an offence against the regulations are the usual ones for an offence against a Defence Regulation—on summary conviction, imprisonment not exceeding three months or a fine not exceeding one hundred pounds, or both; and on conviction on indictment, imprisonment not exceeding two years or a fine not exceeding five hundred pounds, or both. These penalties are specially laid down by reg. 5, which also authorises the imposing of a fine equal to three times the value of the security or income in question. Further, if the offender is a body corporate there is no limitation on the fine, the court being empowered to impose whatever fine it thinks fit.

It is perhaps of some importance to notice that by reg. 6 the "owner" of a security is deemed to include any person who has power to sell or transfer the security, or who has custody of it, or who receives, either for himself or for the benefit of another dividends or interest from it, or who has any other kind of interest in the security. In the case of trusts, "owner" includes persons entitled to revoke or vary the trust or to control the investment of the trust money; it also includes any person entitled to enforce the performance of the trust.

The other main section of the Act is s. 2, which deals with the release of securities which have been placed at the disposal of the Treasury and with the payments to be made if the securities are not released. According to subs. (1), the Treasury is to release any security which has been placed at its disposal when it is satisfied that it is no longer necessary

or expedient for the purposes of the agreement that control should be retained over it. The release of a security of any description may, according to subs. (8), be satisfied by the release of any other security of that same description, or by the release of any security substituted for the security in question by the exercise of any right of exchange or conversion attaching to the security.

Now the right to have a security released may be extinguished, and this extinguishment may occur in two ways. Firstly, it may occur by the security being dealt with in such a way under the agreement so as to prevent the Treasury regaining control of the security. Secondly, the right to release may be extinguished by the Treasury expressly declaring that the right to release is extinguished. They are empowered by s. 2 (1) (*a*) to do this if it appears necessary or expedient so to do for the purposes of the agreement. This declaration may be made by an order applying to a whole class of securities, or by a direction applying to a particular security. If the right to release of any security is thus extinguished, the Treasury shall pay as compensation for the security such sum as they may determine as being a sum not less than the market value of the security. If, however, the Treasury certify that the security is incapable of being evaluated on the basis of market value, the sum for compensation shall be settled by agreement, or, failing this, by arbitration. Income applied in pursuance of the agreement is dealt with in subs. (3). If the income in the U.S.A. of a British insurance company, or the income from any security placed at the disposal of the Treasury before that security is either released or the right to release extinguished be utilised in pursuance of the agreement, then the Treasury shall pay compensation therefor. The compensation shall be such sum in sterling as appears to them to be the equivalent of the income in question.

It is laid down by subs. (9) that payments made under this section shall be made out of the Exchange Equalisation Account. The person who shall be entitled to receive these payments is defined by subs. (4) as the person who, immediately before the placing of the security at the disposal of the Treasury, was entitled (as bailee or otherwise) to possession of the documents of title to the security, or in the case of British insurance companies, was entitled to receive the income arising as aforesaid from that branch. Such person is apparently to be registered by the Treasury as the person entitled to receive this payment if and when it becomes payable, and according to subs. (5) his receipt for the release or for the payment shall be a good discharge to the Treasury. If whilst a security is at the disposal of the Treasury a security is issued by way of dividend on the first security, then, by virtue of subs. (6), this second security itself shall be deemed to be placed at the disposal of the Treasury. Subsection (7) is a somewhat complicated section dealing with income tax in relation to payments under this section.

Any regulations made under the Act must be laid on the table of the House of Commons for forty days.

A "security" is defined in s. 4 (2) as including shares, bonds, notes, debentures, certificates of beneficial interest and warrants conferring an option to acquire securities.

A Conveyancer's Diary.

Destruction of Title Deeds.

I HAVE for some time past been considering the position in regard to documents of title destroyed by enemy action. The matter was put to us by a subscriber who asked for a full discussion of what could be done "with regard to remedying the matter," where such destruction has occurred. He went on to say: "There must be a number of solicitors (including myself) who had in their possession clients' title deeds which have been so destroyed, and also a number of mortgagees holding their mortgages and the title deeds who have also had them all destroyed by enemy action."

First, it is necessary to deal with the liability of the person who holds the deeds of another, be he a solicitor holding his own client's deeds or a mortgagee (or his agent) holding the mortgagor's deeds. I think that for ordinary purposes these two classes of bailee might well stand on two different footings, as the first seems to hold on a gratuitous bailment, while the second does not. But both classes are in exactly the same position for purposes of war damage, by virtue of the Liability for War Damage (Miscellaneous Provisions) Act, 1939. It is there provided, in effect, that the obligations of a bailee to restore, repair or insure the goods included in the bailment, or to compensate anyone for loss or damage to them, shall "be deemed not to extend to loss or damage by war," unless the goods are being kept or transported in a manner contrary to the terms of the bailment, and not even then if the bailee can satisfy the court that he was doing as he was in the reasonable belief that the deviation was putting the goods in less jeopardy than if the contract were strictly adhered to (s. 1). The Act contains in s. 8 (2) a fairly wide definition of war damage, on the lines now familiar. This Act therefore seems to be a complete protection to a solicitor or other person who has properly got someone else's title deeds in his safe. It might be different if they have been carelessly left about loose and so have been destroyed when the contents of the safe survived. But in the ordinary case the Act is the end of any complaint by the owner.

Second, it is necessary to observe that "evidences of title to any property or right or of the discharge of any obligation" are excluded from the definition of "goods" contained in s. 95 (1) of the War Damage Act, 1941. Consequently they are not insurable under either of the "goods" schemes set up by that Act. An interesting argument would be possible on the question whether title deeds are "land" so as to be within Pt. I of the Act, which provides for compensation for war damage to land. They are certainly land for some purposes, but the case would be a difficult one and is not greatly illuminated by the definition in the Act, viz., "'Land' means land in the United Kingdom and includes" various things (s. 95 (1)). On the whole, therefore, I think it would not be easy for anyone to recover compensation under the Act for the destruction of title deeds, and so the probability is that it will be for the person who wishes to prove the matter comprised in the deeds to bear the cost of so doing.

Third, the position as regards proof is exactly the same in cases where documents have been destroyed by war as where they have been destroyed by other means. That is to say, secondary evidence is admissible. The real question on which professional opinion should be clarified is whether the problem of proof created by enemy action is so much greater in degree than that caused by ordinary mischances that legislation is necessary. The problem now arising is in no way different in kind from the normal one, and on the whole it would not be desirable to legislate unless there is plain evidence that difficulties are so general as to cause real hardship and inconvenience. I indicate below what *could* be done, but I am not absolutely convinced at the moment that it *need* be done. We should welcome it if subscribers with actual experience of difficulties of the sort here discussed would communicate the facts to us.

For the following reasons I have some doubt as to the need for legislation. I am told that in a good many cases documents which were in safes are not destroyed, though they may be badly damaged, and that it is very often possible to read them, at least with the help of experts. I gather that documents on skins often shrink so that they can only be read with a strong magnifying glass. In such cases a photograph can be taken and the print can be a big enlargement, which will be quite good enough for practical purposes.

Even if there is no chance of using the document itself as an evidence of title, there will be many cases where completed drafts or abstracts exist elsewhere; after all, on most sales at least two solicitors are engaged, and the chances of the offices of both being destroyed are far less than those of only one such office being destroyed. I have no doubt that the mutual courtesy of the profession will solve many of these problems. If there is a title reasonably well proved by secondary evidence, it would be simple enough to register it at the Land Registry while the evidence is still available.

Again, there must often be cases where all the parties to recent material deeds are still alive. In such a case the matter can be cured by such persons executing a fresh document over a ten shilling stamp declaring that on such and such a day a conveyance was made between them and that for removing doubts such conveyance is thereby made again. Such was the position in one of the few cases of the kind which I have yet seen: actually, the document was an assent, so there seemed to be nothing to prevent the fresh one from being merely under hand and unstamped.

It may be that there are a number of cases where none of these solutions is of any use, and I think that for such cases new machinery will have to be provided if they are in sufficient quantity to warrant it.

It has been suggested to me that something might be done by using an action for a declaration. But I see considerable difficulties in that course. The jurisdiction to make declarations where no other relief is asked for or is obtainable is closely restricted. The numerous cases on the point are collected in the "Annual Practice" in the notes to Ord. 25, r. 5. The rule is generally understood to be that one cannot ask for a declaration of a right unless the right is disputed, a proposition clearly established by *Re Clay* [1919] 1 Ch. 66, a case in the Court of Appeal. It would generally be difficult to find a defendant to such an action in the events contemplated, as there will usually be no one at the moment who challenges the title. In any case, a declaration is only operative *inter partes*, so that it would be useless against a

claimant appearing later and claiming to be entitled through someone not a party to the action.

Similarly, it has been suggested that use might be made of an action to perpetuate testimony. The difficulty is, however, that most cases arising from war damage will fall outside the extremely limited scope of Ord. 37, r. 35, under which such actions are possible. The action is only available to a person who would, in the circumstances alleged by him, become entitled, *upon the happening of a future event*, to any property or title of honour, and where his claim cannot be brought to trial until such event occurs.

There seem to me to be two sorts of solution, and it will depend on the size of the problem which is appropriate, assuming that legislation is necessary at all. If there has really been a wholesale destruction of documents of title and of secondary evidence of them, we shall obviously have to follow the precedent of what happened after the only other real holocaust in our history, viz., the Great Fire of 1666. I must confess to having not actually looked up the text of the relevant Act, but I recently had in my hands a monograph on the subject of that fire, from which I gather that an Act was passed establishing a special Commission of Judges, known as the Fire Court or the Fire Judges, with practically plenary powers to clear up the confusion. For example, they could, and did, direct as between lessor and lessee who was to rebuild, and could, and did, make a new lease of the premises for the parties. It seems pretty clear that an order of the Fire Judges would have become a fresh root of title, and, owing to their enormous powers, an infrangible one.

A remedy on these lines would be easy, but would be a purely *ad hoc* measure and would not be justifiable unless there is a real emergency. At the moment I incline to the view that the difficulty envisaged is merely one greater in degree, and, at that, not very seriously greater, than exists with the purely civilian risk of fire. There is no machinery to deal with ordinary loss of deeds. Perhaps when a good many people have lost their deeds this is the moment to deal with this matter permanently. What would be necessary is a power for the court in really meritorious cases to make declarations of title, not *in personam*, but *in rem*. Our jurisprudence has aways leant against declarations *in rem;* but in one case a statutory power has been conferred and has worked satisfactorily. The power is, of course, that given to the court (in practice, to the Chancery Division) under L.P.A., s. 84 (2), to declare whether or not a restrictive covenant is enforceable. By subs. (5) such a declaration operates *in rem*. The court has been very cautious in exercising this novel power, and in *Re Sunnyfield* [1932] 1 Ch. 79, Maugham, J., laid down some practical rules for securing that the power is not abused. In practice an applicant has to give specific notice of his application to everyone who seems to the Master on reading all the applicant's evidence, to have a *probable* claim. I think that there may be a case for doing something of the kind as regards declarations of title, and the Chancery Division would, no doubt, use its powers sparingly. That is, I think, the most useful course, assuming that the present law should be changed at all.

Obituary.

Mr. JUSTICE HAWKE.

Mr. Justice Hawke died on Thursday, 30th October, aged 72. An appreciation appears at p. 427 of this issue.

Mr. H. W. GOODGER.

Mr. Henry William Goodger, solicitor, of Messrs. Goodger and Lowe, of Burton-on-Trent, died on Wednesday, 22nd October, aged 71. He was admitted in 1896, and had been clerk to the Burton-on-Trent Justices for 40 years.

Mr. A. WANSBROUGH JONES.

Mr. Arthur Wansbrough Jones, solicitor, of Messrs. Stevens. Miller & Jones, of Norwich, died on Wednesday, 22nd October, aged 77. He was admitted in 1889, and was for 43 years Registrar of Norwich Guildhall Court of Record.

Many solicitors' managing clerks will be brought into compulsory insurance, and a large number who are voluntary contributors will become compulsory contributors on 5th January, 1942, by the raising of the remuneration limit from £250 per annum to £420 per annum. Persons who are brought into insurance by this new provision are advised to get into touch as early as possible with the societies they propose to join for two reasons: (1) they should have their contribution cards before 5th January, 1942, and (2) they will become entitled to medical benefit as soon as they begin stamping. The United Law Clerks' Society is an Approved Society with a membership of 3,000 men and women, residing in London and the provinces. It provides its members with an efficient service. The address is Maxwell House, Arundel Street, Strand, London, W.C.2. Telephone, Temple Bar 8879.

Our County Court Letter.

Invalid Sale of Lorry.

In a recent case at Walsall County Court (*Harrington* v. *Clews & Baugh and Hill*) the plaintiff claimed from the first defendants (a firm) £120 as the value of a lorry, or, in the alternative, £60 as the price obtained by them on the sale of the lorry. The plaintiff's claim against the second defendant was for the return of the lorry, or, alternatively, £120, its value. The plaintiff was a corn merchant, and his case was that in November, 1933, he had paid £330 for the lorry, which was sent to the first defendants, who were garage proprietors, in November, 1940, for repairs. The plaintiff mentioned to the defendant Clews that the lorry was for sale, and should realise £150. No authority to sell was given to Clews, and the plaintiff himself advertised the lorry for sale on the 23rd November. Nevertheless, the defendant Clews purported to have sold the lorry for £60, having had a deposit of £5 from the second defendant. The case for the first defendants was that Clews had been authorised by the plaintiff to sell the lorry. In view of its condition, £60 was a good price. The second defendant's case was that he took delivery of the lorry on the 17th December, 1940, and had at once fitted new tyres. These and other replacements had cost £30. Although the plaintiff had not handed over the log book, a duplicate had been obtained (for the purpose of a road licence and petrol allowance) on the second defendant's declaration that the original had been mislaid. His Honour Judge Caporn gave judgment for the plaintiff, with costs, against both defendants, less £3 15s. as against the first defendants for work done on the lorry. The evidence was that no authority had been given to sell, and a fair price had not been obtained. An indemnity was granted to the second defendant against the first defendants in respect of any sum payable to the plaintiff.

Straying Cattle on Railway.

In a recent case at Tewkesbury County Court (*Woodrow* v. *London Midland & Scottish Rly. Co.*) the claim was for £98 as the value of three cows killed by a train on the 25th November, 1939. The plaintiff's case was that a number of cows were put into a field near the railway at 4.20 p.m., and a gate at the bottom of an accommodation road was properly shut. At 5.20 p.m. the gate was found swinging open in the wind, and fifteen cows were on the railway. Three had been killed—obviously by a passing train. It was contended that the hinge post was in such a position that the gate did not remain against the latch post when it was swung to. The bolt (or spring) was also defective, and the defendants' employees had sometimes inserted a piece of stone, at the lower end of the bolt, for the purpose of increasing the pressure of the bolt against the catch, but it frequently fell out. The defendants' case was their only duty was to provide a good and sufficient gate. On the morning of the accident, the ganger had found the gate in order, and a permanent way inspector also found it in good condition two days later. The plaintiff had never made a complaint about the state of the gate before the accident, but it had often been found open by the defendants' employees. This was because the gate had been slammed; if it were closed by hand it would remain closed. His Honour Judge Kennedy, K.C., gave judgment for the defendants, with costs.

Rules and Orders.

S.R. & O., 1941, No. 1684/L.30.

SUPREME COURT, ENGLAND—Procedure.

The Matrimonial Causes (District Registries) Order, 1941.

Dated November 1, 1941.

I, The Right Honourable John Viscount Simon, Lord High Chancellor of Great Britain, in exercise of the power vested in me by Rule 1 of the Matrimonial Causes Rules, 1937,* and all other powers enabling me in this behalf, and with the concurrence of The Right Honourable Frank Boyd Lord Merriman, President of the Probate, Divorce and Admiralty Division, do hereby make the following order:—

On and after the date of this order, any matrimonial cause or matter may be commenced and prosecuted by a poor person, subject to the Matrimonial Causes Rules, 1937, in the District Registries of the High Court in Bedford and Grimsby in addition to the District Registries set out in Appendix I to those Rules as amended by any subsequent order made by the Lord Chancellor with the concurrence of the President of the Probate, Divorce and Admiralty Division.

Dated the 1st day of November, 1941.

Simon, C.

I concur:

Merriman, P.

* S.R. & O. 1937 (No. 1113) p. 2195

To-day and Yesterday.

LEGAL CALENDAR.

3 November.—In 1891, when Bulgaria was in a difficult position between Russian and Turkish intrigues and was being dictatorially administered by the premier, Stambouloff, an attempt was made to murder him, but the shots struck and killed Beltcheff, the finance minister. In the following year several persons were tried for complicity in the crime, five being condemned to death and eight to imprisonment. On the 3rd November, 1893, however, the Court of Appeal at Sofia reversed the verdict against Georgriff, one of those sentenced to die, and he was released.

4 November.—On the 4th November, 1667, Pepys recorded that Sir H. Cholmeley had said " he do think really that they will cut off my Lord Chancellor's head, the Chancellor at this day having as much pride as is possible to those few that venture their fortunes by coming to see him and that the Duke of York is troubled much, knowing that those that fling down the Chancellor cannot stop there but will do something to him to prevent his having it in his power hereafter to avenge himself and father-in-law upon them." Lord Clarendon was then very near his final fall. His impeachment was already being pressed for in Parliament and within a month he had to fly abroad for safety.

5 November.—The Marquis de Nayve was an impoverished nobleman who, wearying of life in a minor Government post, married an heiress through a matrimonial agency. She already had a son of twelve, the fruit of an early indiscretion, brought up by a foster mother in ignorance of his parentage, and to safeguard his own prospects the Marquis decided to get rid of him. Placed in a seminary to study for the Church, the boy showed some curiosity about his birth, and observing this restlessness his stepfather took him on a journey to Italy from which he never returned. His body was discovered at the foot of some rocks near Naples, but for ten years the affair was hushed up. At last in 1895 the Marquis was tried at Bourges for murder, but the mystery remained unsolved, for on the 5th November he was acquitted. The obvious hatred and malice of his wife, who was his accuser, certainly contributed to that result.

6 November.—Louis Philippe Joseph, Duke of Orleans, *alias* Philippe Egalité, is a warning to " progressive " noblemen who think they can hold hands with revolutionaries and lead them round to a benevolent Liberalism. He was the richest man in France and made himself popular by gifts to the poor in time of famine and by opening the gardens of the Palais Royal to the people. Under the shadow of the coming revolution he made no secret of his advanced principles, and in 1789 he was one of the peers who abandoned their fellows to take their place with the Commons in the States General. It was believed that his money was behind subversive activities such as the assult on the Bastille, and while the court party suspected all his works the Commune of Paris gave him the title of Citoyen Egalité. In the Convention he voted for the King's death, but when the Reign of Terror came he was not spared. On the 6th November, 1793, he was tried for his life and immediately guillotined.

7 November.—On the 7th November, 1749, there were executed at Ely Amy Hutchinson, a girl of seventeen, who had poisoned her husband, and John Vicars, who had cut his wife's throat. They sang the fifty-first psalm together, after which he shook hands with several persons and conversed with a puzzling mixture of penitence and unconcern. Amy was executed first. Her face and hands were smeared with tar and her garment daubed with pitch. After she had said a short prayer the executioner strangled her at the stake where she was to be burnt; then the fire was kindled. Vicars then helped the executioner to tie the knot for his hanging, threw himself off the ladder and expired in a few minutes. Contrary to his particular wish, he was afterwards hanged in chains. The girl had poisoned a husband whom she had married in a fit of pique when she thought her lover had abandoned her. The man had killed a wife who had quarrelled with him and gone to live with her mother.

8 November.—On the 8th November, 1748, " was tried in the King's Bench a cause wherein an Italian singer was plaintiff and a person of distinction defendant. The action was laid for a thousand guineas for one winter's performance at the Opera House and the jury gave a verdict for the plaintiff."

9 November.—On the 9th November, 1610, Father George Nappier was executed in his native Oxford, having been convicted of high treason in that he was a Roman Catholic priest whose presence in England was contrary to law. He had been ordained abroad in 1596 and spent seven missionary years in this country before being arrested. At his trial he was found guilty, largely on account of his refusal to deny his priesthood, for there was no direct evidence of it. His relations made strenuous efforts to obtain a reprieve, but he sealed his own fate by reconciling to the Catholic faith a fellow prisoner condemned to death. On the day of his execution he said Mass in prison. Having been drawn to the gallows on a hurdle he cheerfully ascended the ladder. He denied that he was guilty of treason, saying: " I shall appear before the just Judge of Heaven, to whom I appeal, who will determine whether or no it be treason to be a priest." He also said: " I pray God preserve His Majesty and make him a blessed saint in Heaven." Then he prayed: " In Thee, O Lord, I have put my trust; let me not be confounded for ever." When he was turned off the ladder he struck himself three times on the breast and so died. His head was set up on Christ Church steeple and his quarters on the city's gates.

Death at their Posts.

The sudden and tragic passing of Mr. Justice Hawke, found dead in his bed during the Chelmsford Assizes, is not without precedent in legal history. In fact, in Victorian times there was a whole series of similar melancholy occasions. Perhaps the most dramatic was the death of Mr. Justice Talfourd, author and friend of Dickens, at Stafford in 1854. He was delivering his charge to the grand jury emphatically calling for a closer union between rich and poor when he collapsed and died. This incident inspired Mr. Justice Darling to one of his most impressive poems. In 1860, Mr. Baron Watson, who had fought in the Napoleonic wars as a lieutenant of dragoons, was seized with apoplexy just after concluding his charge to the grand jury at Welshpool; he died next day. Three years later, Mr. Justice Wightman died suddenly at York. Vigorous and healthy in his eightieth year, he spent the last day of his life trying a complicated case with a mastery which excited the admiration of the crowded court. He spent the evening with his daughter talking cheerfully and only complaining a little of his work overcoming him. After retiring to rest he answered her tap on his door and enquiring how he was perfectly reassuringly. But he never rose from his bed. There must be some still living who remember the melancholy end of Mr. Justice Watkin Williams during the Nottingham Assizes in 1884 and the public excitement it created. In London, too, there were Victorian legal tragedies. In 1861, Lord Chancellor Campbell, despite his great age, was still in full vigour. One day he attended a cabinet council, entertained a party of friends to dinner and retired as usual, only to be found dead in his room next morning. In 1869, Mr. Justice Hayes suffered a fatal seizure while unrobing after trying a case at Westminster. Mr. Justice Manisty collapsed in court and died soon after in 1890.

Notes and News.

Honours and Appointments.

The Lord Chancellor has appointed Mr. Arthur Harold Forbes to be a Judge of County Courts, and has made the following arrangements consequent upon the retirement of Judge Cotes-Preedy, K.C.: Judge J. H. D. Hurst to be the Judge of the County Courts on Circuit No. 36 (Oxford, Reading, etc.), and Judge Forbes to be the Judge of the County Courts on Circuit No. 23 (Coventry, Northampton, etc.).

Lieutenant-Colonel C. G. Vickers, V.C., a partner in the firm of Messrs. Slaughter & May, solicitors, has been appointed a member of the London Passenger Transport Board for a period of seven years. He was admitted in 1923.

Notes.

SALVAGE OF WASTE PAPER.

The Ministry of Supply are appealing for 100,000 tons of waste paper at once. This is wanted for all kinds of munitions—cartridge and shell cases, mines, radios, machine gun belts, and even wall boards for army huts. At present much of this paper has to be imported, and 25,000 tons of shipping is thus employed. If the waste in this country can be collected, that tonnage can be diverted to carrying munitions to Russia. Every class of waste is wanted—old periodicals, publications, back numbers, books, old correspondence, files, records, out-of-date documents, ledgers, account books, old invoices and receipts, etc. Bulk waste can be disposed of to the local council, but an approved waste paper merchant will collect and pay for waste at schedule rates. In the case of private and confidential documents, approved waste paper merchants will give a guarantee as to the handling and disposing of the waste. In exceptional cases it can usually be arranged that an official of the firm disposing of the waste can watch the documents being destroyed at the paper mills. We therefore ask our readers to do all in their power to make this appeal a success, and to continue to co-operate by a regular and sustained collection of all current waste paper.

Notes of Cases.

COURT OF APPEAL.

Gillette Industries, Ltd. *v.* Bernstein.

Lord Greene, M.R., Clauson and du Parcq, L.JJ. 25th July, 1941.

Patents—Sale in disregard of restrictive condition—Knowledge of restriction—Certificate of validity of patent—When granted.

Appeal from a decision of Bennett, J.

The plaintiffs, G, Ltd., brought three actions against B, A and S, which were consolidated, to restrain them from selling the razor blades manufactured by the plaintiffs under their patents for less than the price fixed by the plaintiffs. The defendant B appeared and submitted to judgment. The defendants A and S did not appear at the trial, but in their defences they did not admit the alleged sales and disputed the validity of the patents. Bennett, J., refused to grant the relief the plaintiffs sought against A and S on the ground that their knowledge of the price restrictions at the relevant date had not been proved. He also refused to grant a certificate of validity in respect of the patent. The plaintiffs appealed.

Lord Greene, M.R., granting the injunction the plaintiffs sought, but refusing a certificate of validity, said the law was clear. It was for the patentee to prove that the restrictive covenant had been brought to the defendant's notice when he acquired the goods. It was not sufficient to establish that it came to his knowledge subsequently before he disposed of them (*National Phonograph Co. of Australia, Ltd.* v. *Menck* [1911] A.C. 336). Counsel had referred to *Columbia Gramophone Co., Ltd.* v. *Thoms* (1924), 41 R.P.C. 294, 296, as supporting the view that the time of sale was the relevant time. Tomlin, J., as he then was, had not meant to say that. The question of knowledge was one of fact, and in his lordship's opinion the evidence showed the defendants knew of the restriction. The plaintiffs therefore were entitled to an injunction. With regard to the certificate of validity: The validity of the patents, though put in issue, had not been investigated by the court. The plaintiffs had merely given *prima facie* evidence of validity. There might be cases where it would be proper to grant a certificate of validity where the defendants had not appeared and the matter had not been thrashed out. There was great difficulty in dealing with questions of validity where there had not been adequate cross-examination or argument and close scrutiny of the true construction of the various specifications. Should the court grant a certificate where these matters had not been really gone into, there was a risk of affecting the public in future cases without the court having had sufficient evidence before it. Every case depended upon its own facts. The court, however, should not feel itself bound, as a matter of custom or practice, merely on *prima facie* evidence being given, to grant a certificate of validity in a case where there had been no effective contest.

Clauson, and du Parcq, L.JJ., agreed.

Counsel: *W. Trevor Watson*, K.C., and *Marlow* (for *R. Drewe*, on war service), for the appellants; the respondents did not appear.

Solicitors: *Bell, Brodrick & Gray.*

[Reported by Miss B. A. Bicknell, Barrister-at-Law.]

CHANCERY DIVISION.

In re an Application by the Midland Bank, Ltd. (Waller).

Uthwatt, J. 21st October, 1941.

Emergency legislation—Application by mortgagee—Mortgagor bankrupt—Trustee in bankruptcy respondent to summons—Jurisdiction of court to grant relief—Courts (Emergency Powers) Act, 1939 (2 & 3 *Geo.* 6, *c.* 67), *s.* 1 (4).

Adjourned summons.

By four mortgages dated the 18th October, 1938, the mortgagor had charged certain premises in favour of the applicant bank to secure considerable sums which were still owing. Early in 1941 the mortgagor was adjudicated bankrupt and the respondent was appointed to be her trustee in bankruptcy. The mortgagor did not in those proceedings apply for relief under s. 1 (5) of the Courts (Emergency Powers) Act, 1939. By this application under the Act the bank ask for leave to exercise the remedies which might be available to it by way of the appointment of a receiver and the realisation of the properties comprised in its security. The mortgagor's trustee in bankruptcy, who was the respondent to the summons, asked the court to exercise the discretion conferred by subs. (4) of s. 1 of the Act in his favour, as the financial difficulties of the mortgagor, who was a boarding-house keeper, were attributable to the war.

Uthwatt, J., said that the question was whether he had jurisdiction to exercise the discretion conferred by subs. (4) of s. 1. The effect of the bankruptcy proceedings was that no action to recover the debt could be taken against the mortgagor and, on an order for discharge being made, she would be released from the debt. The position of the trustee in bankruptcy was that he was in no way personally liable for the debt, but the equity of redemption in the property had vested in him. The bankrupt was not a necessary or proper party to these proceedings, for no right was sought to be enforced against her or against property to which she was entitled. The trustee was alone interested in the matter and the only proper respondent. He was not a person within the meaning of subs. (4) of s. 1 who was "liable to pay the debt or perform the obligation in question." The point was covered by the construction given to subs. (4). In *In re an Application of the National Provincial Bank* (*Liddiard*) [1941] Ch. 158; 85 Sol. J. 10; and *In re Midland Bank* [1941] Ch. 350; 85 Sol. J. 264. It was unfortunate the court had no jurisdiction to grant relief where the trustee in bankruptcy or the assignee of the mortgagor were the persons interested in the mortgaged property. Its power was limited to the power considered by Farwell, J., in *In re an Application of Hinckley and South Leicestershire Permanent Benefit Building Society* (*Freeman*) [1941] Ch. 32; 84 Sol. J. 620. It was unnecessary to consider the exercise of that power as the bank had agreed to limit their application to the appointment of a receiver.

Counsel: *Richmount; Raeburn.*

Solicitors: *Candler, Sykes & Dore*, for *Leonard Gray & Co.*, Chelmsford; *M. A. Jacobs & Sons.*

[Reported by Miss B. A. Bicknell, Barrister-at-Law.]

KING'S BENCH DIVISION.

Lotinga *v.* North Eastern Marine Engineering Co., Ltd.

Viscount Caldecote, C.J., and Tucker, J. 23rd July, 1941.

Factories—Death of workman—Overhead travelling crane in erecting shop—Workman working in danger-zone—Struck by crane and killed—Effective measures to prevent approach of crane an absolute obligation on employer—Operation of warning system for many years without accident immaterial—Factories Act, 1937 (1 *Edw.* 8 & 1 *Geo.* 6, *c.* 67), *ss.* 24 (7), 133.

Appeal by case stated from a decision of Wallsend justices.

An information was preferred by the appellant, an inspector of factories, charging the respondent company with having on the 15th June, 1940, as occupiers of a factory, contravened s. 24 (7) of the Factories Act, 1937. The particulars of the alleged offence were that a labourer called Dawson was working near the wheel-track of the 60-ton overhead travelling crane in the company's erecting shop, in a place where he was liable to be struck by the crane, when no effective measures had been taken to ensure that the crane did not approach within twenty feet of the place where he was working, with the result that he received fatal injuries, contrary to s. 133 of the Act. The following facts were established: Dawson and two other men employed in the company's erecting shop were working on a gantry, where they were in danger of injury from the movements of an overhead crane. The men were aware of the danger. Notices were posted near such danger-zones informing those working there that they must warn the crane-drivers, who were not always able to look out for them. The drivers regularly received and acted on warnings from workmen. The crane-driver concerned had thirty-seven years' experience of driving the crane in the erecting shop. The practice of warnings above described had been in operation for many years without accident. On the day in question the overhead crane approached without any warning having been given by anyone, and Dawson was struck by it and killed. Dawson and the others had decided that as the crane was forty to fifty feet away they would have time, if it approached, to reach a position of safety from which they could warn the driver of their presence. Evidence was before the court of other possible measures said to be more effective than those adopted by the company. It was contended for the inspector of factories that as the company's measures did not prevent Dawson from being struck by the crane they could not have been effective measures, and that the measures taken must prevent the occurrence they were designed to prevent. It was contended for the company that the inspector's contentions, if correct, would deprive the justices of all jurisdiction except on the question of penalty whenever an accident was shown to have occurred; that it was for the justices to examine the evidence before them of the company's precautions; and that a workman's failure to comply with well-known instructions through an error of judgment did not prove that proper precautionary measures had not been taken. The justices held that it was their duty to consider the evidence; that the test of the effectiveness of the measures was their success or failure over a substantial period; and that the company's measures could not be considered to be ineffective after thirty-seven years' operation without accident. They dismissed the information, and the company appealed.

Viscount Caldecote, C.J., said that the Factories Act, 1937, was more stringent in its terms than any previous legislation on the same subject. As Lord Hewart, C.J., had said in *Sutherland* v. *Mills* (*James*) (*Executors*), *Ltd.* (1938), 36 L.G.R. 167, a large part of the purpose of such Acts was to save workmen from themselves. It was argued that the respondents had discharged the obligation resting on them by exhibiting notices forbidding the approach by cranes to within twenty feet of where workmen were working on the gantry, and enjoining workmen to notify the crane-driver of their presence on the gantry before they began work. The finding of the justices, with its reference to the workman's faulty judgment, clearly placed the duty on the workman of taking action to avert an accident, and stated that in exercising faulty judgment the deceased workman had failed to discharge that duty. The Act, however, placed the duty on the employer and not on the workman. Section 24 used strong words: it required that "effective measures shall be taken . . . to ensure" a specified result. The evidence disclosed no measures at all to have been taken either by warning or otherwise to prevent the crane from approaching to within twenty feet of where the workmen were working. The justices had

erred because they thought that the fact that no accident had taken place for many years meant that the procedure followed during those years must be effective. Section 24 (7) was intended by the use of the strongest possible language to place an absolute obligation on the employer. The case must be remitted to the justices with a direction to convict.

TUCKER, J., agreed.

COUNSEL: *H. L. Parker; J. H. Robson.*

SOLICITORS: *The Treasury Solicitor; Middleton & Co.*, Sunderland.

[Reported by R. C. CALBURN, Esq., Barrister-at-Law.]

Earl Fitzwilliam's Collieries, Ltd. *v.* **Phillips (Inspector of Taxes).**

Lawrence, J. 13th October, 1941.

Revenue—Income tax—Coal-mining lease—Colliery company to pay fixed sum per acre worked "as liquidated damages in respect of the overlying surface"—Whether "rent" for an "easement"—Whether deductible from profits—Finance Act, 1934 (24 & 25 *Geo.* 5, *c.* 32), *s.* 21 (1), (4) (*b*), (*c*).

Appeal from a decision of the Commissioners for the Special Purposes of the Income Tax Acts.

By a coal-mining lease dated the 31st January, 1935, the appellant company were granted, *inter alia*, the right to work minerals under the demised land, and undertook in addition to paying the rent reserved to pay as "acreage or footage rents" £10 or £5, according to seam, per acre "of so much of each of the other seams of coal demised as shall have been worked and gotten during the preceding half-year as liquidated damages in respect of the overlying surface . . ." The company claimed that those payments were admissible deductions from their profits. The Special Commissioners held that there was the grant of an "easement" within the meaning of s. 21 (4) (*b*) of the Finance Act, 1934, and that the payments were so related to the exercise of the right granted that they must be regarded as periodical payments in the nature of rent in respect of the easement, and so not deductible. The company appealed. (*Cur. adv. vult.*)

LAWRENCE, J., said that it was argued for the Crown that *Inland Revenue Commissioners* v. *New Sharlston Collieries, Ltd.* [1937] 1 K.B. 583; 81 SOL. J. 56, was decisive of the present case. It was argued for the company that the present case was distinguishable because the payments in question were truly liquidated damages, whereas in the case cited the colliery-owner was requiring immunity from actions for damages for subsidence. The case cited was indistinguishable from the present, and the lease to the appellants granted an easement within the meaning of s. 21 of the Act of 1934. On the question whether the payments in question were "rent" within the meaning of the section, it was argued that they bore none of the characteristics of rent. The argument was unsound. Colliery leases differed from other leases because they were leases of a wasting asset. The fact that these payments were made once and for all for each acre worked did not make them distinguishable from rent per acre worked; also the payments were made for the occupation of land in that they presupposed the subsidence of land. The appeal must be dismissed.

COUNSEL: *Heyworth Talbot; the Attorney-General* (Sir Donald Somervell, K.C.), *J. H. Stamp* and *R. P. Hills*, for the Crown.

SOLICITORS: *Andrew, Purves, Sutton & Creery*, for *Newman & Bond*, Barnsley; *Solicitor of Inland Revenue.*

[Reported by R. C. CALBURN, Esq., Barrister-at-Law.]

DIVISIONAL COURT.

In re **a Debtor (No. 1 of 1941),** *Ex parte* **the Debtor** *v.* **The Petitioning Creditor.**

Farwell and Morton, JJ. 12th May, 30th June and 28th July, 1941.

Bankruptcy—Debtor commits acts of bankruptcy—Receiver appointed in lunacy—Subsequently receiving order in bankruptcy made—Validity of order—Jurisdiction—Position of trustee in bankruptcy—Bankruptcy Act, 1914 (4 & 5 *Geo.* 5, *c.* 59), *ss.* 15 (10), 149.

Appeal from a receiving order made by the Registrar of the Barrow-in-Furness and Ulverston County Court.

On the 8th January, 1941, the petitioning creditors recovered judgment against the debtor for £1,114 4s. 9d. and £11 18s. 6d. costs. On the 21st January, 1941, a bankruptcy notice was served on the debtor requiring him to pay these sums. They were not paid, and accordingly the debtor committed an act of bankruptcy on the 28th January, 1941. In the meantime, on the 22nd January, the debtor's mother had applied to the Court in Lunacy for the appointment of a receiver. On the 30th January, 1941, a bankruptcy petition was presented. On the 4th March the Master in Lunacy appointed the Official Solicitor to be receiver and directed him to take possession of all the goods and chattels and real and personal property of the debtor. On the 17th March a receiving order was made. The Official Solicitor, representing the debtor, appealed and asked the court to discharge the receiving order and to dismiss the bankruptcy petition.

MORTON, J., delivering the judgment of the court, said it was contended on behalf of the appellant, first, that a person of unsound mind could not be adjudicated bankrupt or, alternatively, he could not be adjudicated bankrupt otherwise than under the direction of the Court in Lunacy; secondly, if that contention were wrong, an order ought not to have been made in this case, having regard to the orders already made by the Court in Lunacy. The court had no doubt it was well settled by authority that a person of unsound mind (whether so found by inquisition or not) could be adjudicated bankrupt under the direction of the Court in Lunacy. The question was whether he could be adjudicated bankrupt without the concurrence of the Court in Lunacy had not been decided. They had come to the conclusion that the debtor in the present case could be adjudicated bankrupt without such concurrence. There was no express statutory provision on the matter. Sections 15 (10) and 149 of the Bankruptcy Act, 1914, and rr. 199 and 267 of the Bankruptcy Rules, 1915, indicated that such a person could be made bankrupt. There was nothing in these provisions to suggest that they were limited to the case where a debtor became a lunatic after the date of the receiving order. In *In re Farnham* [1895] 2 Ch. 799, the question was treated as being undecided, and the court was therefore, in the present state of the authorities, free to form its own view, which it had done, holding that the debtor could be adjudicated bankrupt. The court had next to consider whether there was any reason for refusing to make a receiving order in the present case. It had been suggested that, if the receiving order stood, there would be a conflict between the trustee in bankruptcy and the *quasi* committee appointed in lunacy. The answer to that objection was that if the order stood and adjudication followed, the title of the trustee in bankruptcy would relate back to the 28th January, 1941, but the title of the trustee would be no better than that of the debtor himself. The Court in Lunacy had taken from the debtor and given to the receiver the possession of the debtor's property, and that possession would not be ousted so long as the jurisdiction of the Court in Lunacy continued. If the debtor recovered and the jurisdiction in lunacy came to an end, the trustee in bankruptcy would be in a position to administer the property vested in him for the benefit of the debtor's creditors. Apart from that, there were advantages in making a receiving order. The trustee in bankruptcy would acquire the legal title at once. There might be assets which he could get in which were beyond the reach of the receiver in lunacy. For example, there might be settlements which were void as against the trustee in bankruptcy. The court expressed no opinion as to whether any assets got in by the trustee in bankruptcy by reason of the provisions of the bankruptcy law, which did not belong to the debtor at the time when the jurisdiction of the Court in Lunacy arose, were subject to the control of the Court in Lunacy. The registrar was right in making the receiving order and the appeal must be dismissed.

COUNSEL: *V. R. Aronson; Gilbert Beyfus*, K.C., and *C. F. Kingham.*

SOLICITORS: *The Official Solicitor; Isadore Goldman & Son.*

[Reported by Miss B. A. BICKNELL, Barrister-at-Law.]

War Legislation.

(Supplementary List, in alphabetical order, to those published week by week in THE SOLICITORS' JOURNAL *from the 16th September, 1939, to the 1st November,* 1941.)

STATUTORY RULES AND ORDERS, 1941.

E.P. 1619. **Barley** (Control and Maximum Prices) (Northern Ireland) Order, October 15.

E.P. 1633. **Cold Storage** (Control of Undertakings) (No. 2) Order, October 17.

E.P. 1595. **Defence** (General) Regulations, 1939. Order in Council, October 10, adding Regulations 60AB and 60AC and amending the Third Schedule.

E.P. 1602. **Essential Work** (Railway Undertakings) Order, October 9.

E.P. 1625. **Finance.** Blocked Accounts (Authorised Investments) (No. 3) Order, October 20.

No. 1613. **Goods and Services** (Price Control). Utility Apparel (Maximum Prices) (No. 3) Order, October 18.

E.P. 1632/L.29. **Metropolitan Police Courts** (No. 2) Order, October 8.

E.P. 1616. **Mustard** (Control of Cultivation) Order, October 11.

E.P. 1624. **Petroleum** (Kerosene) Order, October 10.

No. 1550. **Poisons** (Amendment) Rules, September 22.

E.P. 1635. **Rationing** Order, 1939, as amended. Order, October 18, amending the Directions dated January 6, 1940, and amending the Tea (Rationing) Order, 1940, and the Cheese (Rationing) Order, 1940, and the Cheese (Rationing) Order, 1941.

E.P. 1634. **Sale of Food** (Public Air-Raid Shelters) Order, 1940. Directions, October 17.

No. 1622/L.28. **Supreme Court Funds** (No. 1) Rules, October 6.

No. 1589. **Trading with the Enemy** (Specified Persons) (Amendment) (No. 17) Order, October 17.

[E.P. indicates that the Order is made under Emergency Powers.]

PROVISIONAL RULES AND ORDERS, 1941.

Housing (Repair of War Damage) Provisional Regulations, October 10.

Copies of the above S.R. & O.'s, etc., can be obtained through The Solicitors' Law Stationery Society, Ltd., 22, Chancery Lane, London, W.C.2, and Branches.